

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No. 1376 of 2017

Date Order with Signature of the Judge

For hearing of Bail Application.

For Applicant : Mr. Mian Ashfaq Ahmed, Advocate.

For State : Ms. Rubina Qadir, A.P.G

Heard on : 13.02.2018

Decided on : 07.03.2018

Mrs. Kausar Sultana Hussain, J.:- On dismissal of bail Application No. 901/2014, by the trial Court, vide order dated 17.03.2017 and 15.08.2017, the applicant Ejaz Ahmed has approached this Court, by filing instant bail application under Section 497 Cr.P.C, for post-arrest bail in case FIR No. 121/2013, under Section 302/34 PPC, registered at P.S. Korangi Industrial Area, Karachi.

2. Story of the prosecution in nutshell is that complainant Muhammad Afzal reported that his brother Arshad @ Daniyal son of Abdul Sattar aged about 26 years, running medical store in Akhtar Colony. It is alleged that there was dispute between Ejaz and Arshad @ Daniyal over motorcycle, however, the matter was compromised. On 05.02.2013 one Farhan @ Mota Kala invited Arshad @ Daniyal with family to attend his marriage at Golden Shadi Lawn at Plot No. F-65, Lakhnow Cooperative Housing Society, Main Korangi Road, Karachi. The deceased attended his marriage with his cousin Rashida Begum, brother in law Hasnain Raza, his servant Jahanzaib, friend Jawad and nephew Arsalan. It is stated that on that night cousin of complainant namely Rashida Begum informed her that accused Ejaz, Farhan and his 05 accomplices caused serious injuries in the person of deceased by firing and beating with steel spoon, who could not be survived and died in JPMC, hence this FIR.

3. Learned counsel for the applicant/accused has argued that the applicant/accused is innocent and law abiding citizen and has not committed any crime in which he is involved as after the arrest it came to his knowledge that he has been nominated in the above FIR and the trial court declared him as absconder. He has further argued that FIR lodged against the murder of one Arshad @ Daniyal son of Abdul Sattar is contradictory with the statement of

prosecution witnesses recorded U/s. 161 Cr.PC. He further argued that during investigation police did not recover any incriminating articles or weapon from the place of incident. According to learned counsel for the applicant/accused that co-accused Farhan son of Abdul Qadir was released by the Investigating Officer by inserting his name in column No. 2 of the charge sheet under Section 497(2) Cr.PC and present accused has a right of rule of consistency and is also entitled for concession of bail. According to the learned counsel on the day of incident applicant/accused was present in the marriage ceremony of co-accused Farhan and deceased Arshad @ Daniyal entered in the marriage hall with his friends and after using abusive language he started fighting and firing, due to which applicant/accused also got injured from his firing and invitee guests shifted to him to Jinnah Hospital but due to severe injuries doctors of Jinnah Hospital recommended him to shift Agha Khan Hospital for immediate surgery and he was remained hospitalized for more than one year in different hospitals and till his arrest he was still under medical treatment. According to learned counsel for the applicant/accused that as per contents of challan deceased Arshad was not invited in the marriage ceremony, where he came with his friends and started fighting with the applicant/accused thereafter invitee guests presumed them as dacoits and started to beat deceased due to which he received severe injuries and died during the treatment in the hospital. According to him prosecution witnesses are interested witnesses and there is no material available on record of the prosecution to show the guilt of applicant/accused. At the last he argued that the applicant/accused is neither herded desperate or habitual criminal nor there any apprehension that he may destroy or defeat the evidence of prosecution. In support of his contention he placed reliance upon the cases of Lala Jan Vs. Nurab Khan and another (2012 YLR 2898).

4. Learned D.D.P.P has strongly opposed the bail application on the ground that applicant/accused is involved in heinous crime. He further argued that applicant/accused is fugitive from law for a long period due to which he was declared absconder and there is apprehension that after grant of bail he again become fugitive from law therefore, at this stage when the evidence of the prosecution witnesses is to be recorded, grant of bail may be hampered the prosecution case.

5. After hearing arguments and perusal of record it reveals that the applicant/accused has been nominated in the FIR with his specific role. The applicant/accused has admitted his presence at the time of incident. He himself admitted that as a result of fighting at the place of incident he himself received severe injuries on his body and he remained under treatment in Hospitals for a long time. Admission of the applicant/accused that he was injured as a result of fighting whereas, the brother of the complainant has died in result of head injuries on his body during the said fighting therefore, active participation of the applicant/accused in the said fighting allegedly happened at the place of incident cannot be ignored. Contents of FIR shows that before the incident there was a dispute between the deceased and the applicant/accused on motorcycle which was compromised but after some time the present incident had happened. It is also noticed by this court that during such incident the present applicant/accused has received severe injuries on his body and the brother of complainant also received severe injuries on his body and died, therefore, active role of the applicant/accused shows that the fighting was actually the result of enmity between the applicant/accused and deceased. The plea of applicant/accused that co-accused Farhan was released by the I.O U/s. 497(2) Cr.PC cannot be considered as it was the marriage ceremony of co-accused Farhan and at the time of fighting he was on the stage as groom and no role has been assigned to him during the said fighting in result of which present applicant/accused as well as the deceased have received severe injuries on their respective bodies. Evidence of eye witnesses of this incident is to be recorded by the prosecution before the trial court which had already been delayed due to absconsion of applicant/accused therefore, after grant of bail, if the applicant/accused against become absconder, the case of the prosecution would again face delay in proceeding, hence at this stage release of the applicant/accused on bail may again create hindrances in the proceedings and delay the proceeding. The case law relied upon by the learned counsel for the applicant/accused is not applicable in this case as in reported matter of 2012 YLR 2898 accused were unknown while in present case applicant/accused not only is a nominated accused but also his role in commission of alleged crime has been mentioned in the FIR.

6. Whatever mentioned above, I reached at the irresistible conclusion that the applicant is not entitled for grant of bail. Consequently, the instant bail application is dismissed.

7. Before parting, it needs not to make clarification that the observations recorded above are tentative in nature, therefore, the trial court shall not be influenced in any manner whatsoever.

JUDGE

M. Zeeshan